

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RFA No. 224 of 1997**

**Reserved on: 22.02.2010**

**Date of decision: 20.03.2010**

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State Bank of India ... Appellant

Versus

M/S Malwa Traders & Ors. .... Respondents

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*Coram :*

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?<sup>1</sup> No.

For the appellant: Mr. K.D. Sood, Advocate.

For the respondents: None for the respondents.

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**V.K. Ahuja, J. :**

This is a Regular First Appeal filed by the appellants under Section 96 C.P.C. against the judgment of the Court of learned District Judge, Solan, vide which he decreed the suit of the plaintiff, but it was decreed partly for principal amount as well as interest thereon.

Briefly stated, the facts of the case are that respondents No. 2 and 3, hereinafter referred to as defendants No. 2 and 3, who are partners of respondent No. 1, hereinafter referred to as defendant No. 1. applied to the appellant/plaintiff Bank for creation of cash credit limit. The plaintiff Bank sanctioned cash credit limit in favour of the defendants to the extent of Rs.2,50,000/- on 3.10.1988. They mortgaged their

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<sup>1</sup>Whether reporters of Local Papers may be allowed to see the judgment? Yes.

land and building in favour of the plaintiff Bank. The rate of interest was fixed at 16.5% per annum with quarterly rests. The defendants also executed promissory note for borrowing the amount from the plaintiff Bank. They availed the facility of cash credit limit but did not pay the entire loan, hence, suit for recovery of Rs.3,90,389.70 Paise filed by the plaintiff Bank alongwith interest.

The defendants did not dispute the fact that they availed the cash credit limit or executed the deed etc. but they disputed the rate of interest and pleaded that the statement of account is incorrect and as such, submitted that they are not liable for the amount.

On the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the suit has been instituted and the plaint has been signed and verified on behalf of the plaintiff by a person duly authorized to do so? OPP
2. To what amount, the plaintiff is entitled to recover and from which of the defendants? OPP
3. Whether the plaintiff is entitled to interest and, if so, at what rate and from which date? OPP
4. Whether the suit is within the period of limitation? OPP
5. Whether the loan documents and the documents of balance confirmation have been interpolated while in the custody of the plaintiff, as alleged. If so, its effect? OPD
6. Whether the suit has not been correctly valued for the purpose of court fee and jurisdiction, as alleged? OPD

7. Whether the defendants are entitled to any instalments? OPD
8. Relief.

Parties led their evidence and the learned trial Court vide its judgment decreed the suit of the plaintiff only for a sum of Rupees Two Lacs alongwith interest for a specific period only. The interest was not awarded from 12.6.1992 to 19.3.1996 observing that the suit has been delayed on account of the non-production of the evidence by the plaintiff Bank.

Being aggrieved by the said judgment partly decrying the suit and not granting the interest and not decreeing the suit for sale of mortgaged property, the plaintiff has come up in appeal before this Court.

I have heard learned counsel for the appellant and have gone through the record of the case.

The first ground taken by the learned counsel for the appellant was that the suit should have been decreed for the sale of the mortgaged property as prayed in the plaint but the learned trial Court only decreed the suit for recovery of part of the principal amount. A perusal of the plaint filed by the plaintiff clearly shows that they had prayed that a preliminary decree be passed for recovery of the amount in question and a decree for sale of the mortgaged property be also passed for realization of the amount. However, a perusal of the judgment passed by the learned trial Court shows that though there were no specific reasons for not passing the preliminary decree for sale of the mortgaged property, learned trial Court only granted the relief of recovery of the amount for which the decree was passed. No

reasons have been given for not passing a preliminary decree for sale of the mortgaged property and accordingly, the relief granted by the learned trial Court is liable to be modified and the decree should have been passed for sale of the mortgaged property for recovery of the amount to be determined in the next paras.

The second grievance of the learned counsel for the appellant was that the learned trial Court had wrongly held that the interest claimed by the plaintiff is above 16.5% and accordingly, it itself came to the conclusion that a sum of Rupees Two Lacs was due to the plaintiff from the defendants without any reason and accordingly, the learned trial Court granted a decree for part of the amount. There is substance in the plea raised by the learned counsel for the appellant in this regard. Another connected argument raised was that the learned trial Court did not grant interest for the future period holding that the plaintiff was liable for delay, for which there was no discussion or findings and as such, those findings are also liable to be set aside. It was also submitted that according to the rules of business prevalent with the Bank, firstly, the amount has to be adjusted towards the interest and then towards the principal and there was nothing on record to show that this principle was not followed or was wrongly followed and, therefore, the order passed by the learned trial Court deserves to be modified accordingly.

A perusal of the impugned judgment passed by the learned trial Court shows that rate of interest agreed was 16.5% per annum and the plaintiff Bank failed to substantiate its

plea that rate of interest was variable in view of the instructions of the Reserve Bank of India. There is nothing on record to show that the rate charged was more or was not agreed to in between the parties and there is nothing on record to show that the interest charged was more from the defendants and not in accordance with the instructions of the Reserve Bank of India. Neither the defendants substantiated this plea in their own statements nor by producing any statement of account and had not led any evidence in this regard. Therefore, the findings of the learned trial Court that the statement of account does not show the correct position and accordingly, the learned trial Court observed that only a sum of Rupees Two Lacs was payable, for which a decree was granted. The plaintiff was entitled to the whole amount claimed by them alongwith interest upto date but the learned trial Court wrongly observed that they had claimed interest at the rate of 16.5% interest with effect from 19.3.1996 and no reason has been given as to why the simple interest was allowed and no compound interest as per practice. Moreover, in case, the learned trial Court had any doubt in regard to the statement of account furnished that it was not correct or the principal amount deserves to be reduced including interest as claimed by the plaintiff, it could have asked the Bank to furnish fresh statement of account which should have been considered and then it could have been basis for passing a decree for lesser amount.

In regard to the finding that the plaintiff was not entitled to the interest from 12.6.1992 to 19.3.1996 since the suit was delayed due to non-production of evidence by the plaintiff,

the learned trial Court did not refer to the order sheets or give reasons as to on which date the evidence was not produced or that there was a delay on the part of the plaintiff.

A perusal of the order sheet shows that the case was fixed for plaintiff's evidence on 25.8.1995, on which date, the plaintiff produced a witness but the cross-examination was deferred and thereafter, the cross-examination was completed on 8.11.1995. The case was fixed on 23.12.1995 when the Presiding Officer was on leave and on the next date, that is, on 28.2.1996 the evidence of the plaintiff was closed. In all, three dates were given and the evidence was completed and there are no observations of the Court also that the plaintiff had prayed for adjournment unnecessarily. Therefore, the observations made by the learned trial Court that the plaintiff was responsible for the delay are incorrect and accordingly, the plaintiff is also held entitled to the interest with effect from 12.6.1992 to 19.3.1996 with future interest as allowed at the agreed rate till realization of the amount and not simple interest.

In view of the above discussion, the appeal filed by the appellant is allowed accordingly alongwith costs, as detailed above.

**March 20, 2010**  
**(BSS)**

**( V.K. Ahuja ),**  
**Judge**